Supreme Court, U.S.
FILED

021696 MAY - 8 2003

OFFICE OF THE CLERK

No.

IN THE

Supreme Court Of The United States

KHALIL S. KAHN - Petitioner

VS.

STATE OF LOUISIANA - Respondent

On Petition for Writ of Certiorari
To The Supreme Court of Louisiana

PETITION FOR WRIT OF CERTIORARI

JOHN M. LAWRENCE
COUNSEL OF RECORD
1815 LINE AVENUE
SHREVEPORT, LOUISIANA 71101
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QUESTIONS PRESENTED

Does the Louisiana appellate procedure requiring a writ application for review of a misdemeanor conviction under the Louisiana Theft Statute violate the 6th and 8th Amendments to the United States Constitution?

Does the Louisiana appellate procedure which permits a reviewing court to refuse to grant an opinion on the merits and decline to review a misdemeanor conviction and sentence violate the Due Process Clause of the 14th Amendment and the Equal Protection Clause of the Eleventh Amendment?

Is a legal resident alien entitled to due process of law and equal protection of law under the United States Constitution?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

TABLE OF CONTENTS

OPINIONS BELOW 1

JURISDICTION 2

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 3

STATEMENT OF THE CASE 4

REASONS FOR GRANTING THE WRIT 6

CONCLUSION 8

INDEX TO APPENDICES

APPENDIX A — JUDGMENT OF THE SUPREME COURT OF LOUISIANA

APPENDIX B — JUDGMENT OF THE LOUISIANA COURT OF APPEAL, SECOND CIRCUIT

TABLE OF AUTHORITIES CITED

STATUTES

Louisiana R. S. 14:67 (Misdemeanor Theft)

Louisiana Code of Criminal Procedure Art. 894.1

(States sentencing criteria for exercise of sound descretion of the court in imposing sentence)

Louisiana Code of Criminal Procedure Art. 912.1(C)(1)

In all other cases not otherwise provided by law, the defendant has the right of judicial review by application to the court of appeal for a writ of review. This application shall be accompanied by a complete record of all evidence upon which the judgment is based unless the defendant intelligently waives the right to cause all or any portion of the record to accompany the application.

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is unpublished.

The opinion of the Louisiana Court of Appeal, Second Circuit Appears at Appendix B to the petition and is unpublished.

JURISDICTION

The date on which the highest state court decided this case was February 21, 2003. A copy of that decision appears at Appendix A.

The jurisdiction of this Court is invoked under 28 U. S. C. 1257 (a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitutional Provisions:

Sixth Amendment

Eighth Amendment

Eleventh Amendment

Fourteenth Amendment

Louisiana Constitutional Provisions:

Article I, Section 2 (Due Process of Law)

Article I, Section 19 (Right to Judicial Review)

Article I, Section 22 (Access to Courts)

Louisiana Statutory Provisions:

Louisiana R. S. 14:67 (Misdemeanor Theft)

Louisiana Code of Criminal Procedure Art. 894.1 (Sentencing Criteria)

Louisiana Code of Criminal Procedure Art. 912 (Judgments or Rulings Appealable)

Louisiana Code of Criminal Procedure Art. 912.1(C) (Right of Appeal and Application for Review)

STATEMENT OF THE CASE

Petitioner pled guilty in a Louisiana court to committing a Misdemeanor Theft Under $300.00 for stealing a bucket of chips valued at $405.00 at the Casino Magic in Bossier City, Louisiana. He was then sentenced, without any reasons stated in the record, to serve six (6) months imprisonment, which is the maximum jail sentence for a misdemeanor in Louisiana. Having no criminal history and no prior convictions, petitioner pled guilty and was sentenced to the six month jail term. The sentencing court stated no reasons in the record for the sentence imposed.

Seeking appellate review of his sentence, petitioner filed an Application for Writ of Review, the appropriate remedy for the appeal of a misdemeanor conviction in Louisiana. The Court of Appeal, Second Circuit refused to grant petitioner's Application for Writ of Review stating:

> "On the showing made, the exercise of our supervisory jurisdiction is not warranted"

and refused to grant a rehearing.

Petitioner then filed an Application for Writ of Review in the Supreme Court of Louisiana to review the judgment of the Court of Appeal, Second Circuit and the sentence imposed by the 26th Judicial District Court. On February 21, 2003 the Supreme Court of Louisiana denied petitioner's application without stating any reasons. All petitioner's filings were timely.

Petitioner now files this Petition for Writ of Certiorari in the United States Supreme Court seeking review of the judgment in the Louisiana courts. Petitioner alleges that the Louisiana law which permits a sentence of imprisonment for the conviction of a misdemeanor to be imposed without any reason in the record and without any opinion being stated by the Louisiana reviewing Courts violates the Due Process Clause and the Equal Protection Clause of the United States Constitution.

REASONS FOR GRANTING THE PETITION

The sentencing court imposed the maximum sentence for a misdemeanor conviction in Louisiana without stating any reason for a jail sentence. Petitioner has applied by writ application in two Louisiana reviewing courts without obtaining an opinion as to why the maximum jail sentence is warranted. Sentencing in a Louisiana misdemeanor case is controlled by Louisiana Code of Criminal Procedure Art. 894.1 which states reasons for imposing sentence. Nothing in the sentencing transcript or record of this case indicates consideration by the trial court of any sentencing criteria.

The Louisiana sentencing statute establishes numerous factors which should be accorded weight in sentencing. None of these factors are relevant to the circumstances in this case to support a maximum jail sentence for a misdemeanor. There are numerous factors under the Louisiana sentencing statute which should be accorded weight in determining that a fine, suspended sentence and probation are warranted in this case.

In this case, the State of Louisiana had initially offered a suspended sentence, fine and probation plea bargain. Although petitioner pled guilty he was given a jail sentence. Petitioner is out of jail on bail, living in Texas, has no criminal history, but is being treated differently from other persons sentenced as first offenders in misdemeanor cases. A six month jail sentence would be a hardship on petitioner and his family. All the money stolen was recovered with no loss to the Casino nor any other persons.

The Louisiana appellate review procedure in this case is by Application for Writ of Review. However, both Louisiana courts of review, the Court of Appeal, Second Circuit and the Supreme Court of Louisiana have declined to review the sentence without stating reasons. The reasons for granting certiorari in this case are compelling. Petitioner has not received due process of law and equal treatment of law under the Louisiana legal process.

Petitioner is a legal resident alien entitled to protection of the laws of the United States.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

s/ John M. Lawrence
JOHN M. LAWRENCE
COUNSEL OF RECORD
1815 LINE AVENUE
SHREVEPORT, LOUISIANA 71101
TELEPHONE: (318)222-2001

The Supreme Court Of The United States

STATE OF LOUISIANA

VS. NO. 2002-KP-1005

KHALIL S. KHAN

IN RE: Kahn, Khalil S.; - Defendant; Applying for supervisory and/or Remedial Writs, Parish of Bossier, 26th Judicial District Court Div. C, Nos. 109, 489; to the Court of Appeal, Second Circuit, No. 36104-KW

February 21, 2003

Denied

PFC

CDK

BJJ

JPV

CDT

JTK

JLW

Supreme Court of Louisiana
February 21, 2003

Deputy Clerk of Court
For the Court

STATE OF LOUISIANA
COURT OF APPEAL, SECOND CIRCUIT
430 Fannin Street
Shreveport, LA. 71101
(318) 227-3700

NO: 36104-KW

STATE OF LOUISIANA

VERSUS

KHALIL S. KHAN

FILED: 02/04/02
RECEIVED: BY HAND 02/04/02

On application of Khalil S Khan for WRIT OF REVIEW in No. 109489 on the docket of the Twenty Sixth Judicial District, Parish of BOSSIER, Judge Cecil Paxton Campbell, II.

	Counsel for:
John Michael Lawrence	Khalil S. Khan
	Counsel for:
Hon. James M. Bullers Carl Leroy Ekendahl	State of Louisiana

Before BROWN, GASKINS and DREW, JJ.

WRIT DENIED.

On the showing made, the exercise of our supervisory jurisdiction in not warranted.

Shreveport, Louisiana, this 14th day of February, 2002

FILED: February 14, 2002

s/ Henry N. Brown, Jr. s/ Harmon Drew, Jr. s/ Gay C. Gaskins

s/ Donna D. Brothers
CLERK

SECOND CIRCUIT COURT
OF APPEAL
STATE LOUISIANA
Endorsed Filed February 14 2002
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s/Diana Pratt-Wyatt CLERK

STATE OF LOUISIANA
COURT OF APPEAL, SECOND CIRCUIT
430 Fannin Street
Shreveport, LA. 71101
(318) 227-3700

NO: 36104-KW
On Reconsideration

STATE OF LOUISIANA

VERSUS

KHALIL S. KHAN

FILED: 02/04/02
RECEIVED: BY HAND 02/04/02

On application of Khalil S Khan for WRIT OF REVIEW in No. 109489 on the docket of the Twenty Sixth Judicial District, Parish of BOSSIER, Judge Cecil Paxton Campbell, II.

	Counsel for:
John Michael Lawrence	Khalil S. Khan
	Counsel for:
Hon. James M. Bullers Carl Leroy Ekendahl	State of Louisiana

Before BROWN, GASKINS and DREW, JJ.

RECONSIDERATION DENIED.

It is the policy of this court that when a writ application has been denied, an application for rehearing will not be considered. Application for rehearing will not be considered. Applicant has not presented any information, case law, or argument which was not presented to the prior panel. Accordingly, the motion for rehearing is denied.

Shreveport, Louisiana, 8th day of March, 2002.

s/ William Norris s/ Felicia Toney Williams s/ James E. Stewart, Sr.

Filed: March 8, 2002

s/ Donna D. Brothers
CLERK

SECOND CIRCUIT COURT
OF APPEAL
STATE LOUISIANA
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VS.

STATE OF LOUISIANA - Respondent

PROOF OF SERVICE

I, John M. Lawrence, do swear that on this date, the ____ of May, 2003, as required by Supreme Court Rule 29 I have served the enclosed PETITION FOR WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid.

The names and addresses of those served are as follows:

Schuyler Marvin, District Attorney, 26th Judicial District Court, Bossier Parish, Louisiana, P. O. Box 69, Benton, Louisiana 71006

I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, 2003,

s/ John M. Lawrence
JOHN M. LAWRENCE